



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Ave SE • Bellevue, WA 98008-5452 • 425-649-7000
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December 24, 2012

Bill Granger
Bluefield Holdings, Inc.
14056 180th Avenue SE
Renton, WA 98059

RE: Water Quality Certification Order #8941 for U.S. Army Corps of Engineers
#NWS-2011-612, Bluefield Holdings, Inc. Duwamish River Habitat Restoration
Program, Site 1 Project, in Seattle, King County, Washington

Dear Mr. Granger:

On June 29, 2011, Bluefield Holdings, Inc. submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification (401 Certification) under the federal Clean Water Act for the proposed Bluefield Holdings, Inc. Duwamish River Habitat Restoration Program, Site 1 project. A joint public notice regarding the request was distributed by the U.S. Army Corps of Engineers (Corps) for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on September 20, 2011. On September 19, 2012, Ecology issued a denial without prejudice due to the need for a State Environmental Policy Act determination and project design revisions.

On October 11, 2012, Bluefield Holdings, Inc. submitted a revised JARPA to Ecology for a 401 Certification. Ecology issued a public notice regarding the request on October 22, 2012. On December 20, 2012, the Corps issued a Nationwide Permit (NWP) #27, Aquatic Habitat Restoration, Establishment, and Enhancement Activities, to Bluefield Holdings, Inc. for the above project.

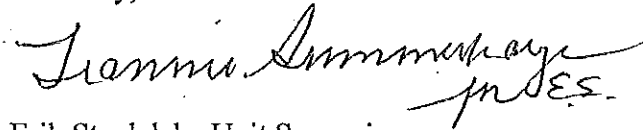
On behalf of the State of Washington, Ecology certifies that the work described in the JARPA and the public notice complies with applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act, as amended, and applicable state laws. This certification is subject to the conditions contained in the enclosed Order.

If you have any questions, please contact Rebekah Padgett at (425) 649-7129. The enclosed Order may be appealed by following the procedures described in the Order.



Bill Granger
December 24, 2012
Page 2 of 2

Sincerely,

A handwritten signature in black ink, appearing to read "Erik Stockdale", with a stylized flourish underneath that includes the letters "ES".

Erik Stockdale, Unit Supervisor
Northwest Regional Office
Shorelands and Environmental Assistance Program

ES:rrp:cja
Enclosure

By certified mail 7012 1640 0000 6245 9603

cc: Jacalen Printz, U.S. Army Corps of Engineers
Joe Miles, Washington Department of Natural Resources
Laura Arber, Washington Department of Fish and Wildlife
Ravi Sanga, U.S. Environmental Protection Agency
Erika Hoffman, U.S. Environmental Protection Agency

e-cc: Joe Burcar – NWRO
Andy Smith – NWRO
Laura Inouye – HQ
Loree' Randall – HQ
Raman Iyer – NWRO
ecyrefedpermits@ecy.wa.gov

IN THE MATTER OF GRANTING A) ORDER #8941
WATER QUALITY) Corps Reference #NWS-2011-612
CERTIFICATION TO) Bluefield Holdings, Inc. Duwamish River Habitat
BLUEFIELD HOLDINGS, INC.) Restoration Program, Site 1 Project; Duwamish
in accordance with 33 U.S.C. 1341) River, Seattle, King County, Washington.
(FWPCA § 401), RCW 90.48.120, RCW)
90.48.260 and Chapter 173-201A WAC)

TO: Bill Granger
Bluefield Holdings, Inc.
14056 180th Avenue SE
Renton, WA 98059

On October 11, 2012, Bluefield Holdings, Inc. submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification. A public notice regarding the request was distributed by Ecology for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on October 24, 2012. On December 20, 2012, the U.S. Army Corps of Engineers issued a Nationwide Permit (NWP) #27, Aquatic Habitat Restoration, Establishment, and Enhancement Activities, to Bluefield Holdings, Inc. for the above project.

The habitat restoration proposal includes construction of an off-channel mudflat with associated high marsh and upland buffer, along with improvement of 220 linear feet of existing riprap/concrete debris shoreline. Shoreline improvements include creating a gentler shoreline slope, increasing aquatic habitat area, seeding high marsh vegetation (above +10 feet mean lower low water [MLLW]), and improving the substrate through placement of fish mix over the existing rock/concrete debris surface to -4 feet MLLW. The project would result in establishment of approximately 0.4 acre of new or improved aquatic habitat and 0.48 acre of improved upland vegetation. The project also includes relocation of upland utilities and maintenance of existing utility access.

The project is located at 1499 SW Spokane Street, Seattle, King County, Washington, Duwamish River, Sections 13 and 18, T. 24 N., R. 3E and 4E., WRIA 9.

AUTHORITIES:

In exercising authority under 33 U.S.C. § 1341, RCW 90.48.120, and RCW 90.48.260, Ecology has examined this application pursuant to the following:

1. Conformance with applicable water quality-based, technology-based, and toxic or pretreatment effluent limitations as provided under 33 U.S.C. §§ 1311, 1312, 1313, 1316, and 1317 (FWPCA §§ 301, 302, 303, 306 and 307);
2. Conformance with the state water quality standards contained in Chapter 173-201A WAC and authorized by 33 U.S.C. § 1313 and by Chapter 90.48 RCW, and with other applicable state laws; and
3. Conformance with the provision of using all known, available and reasonable methods to prevent and control pollution of state waters as required by RCW 90.48.010.

WATER QUALITY CERTIFICATION CONDITIONS:

Through issuance of this Order, Ecology certifies that it has reasonable assurance that the activity as proposed and conditioned will be conducted in a manner that will meet the applicable water quality standards and other appropriate requirements of state law. In view of the foregoing and in accordance with 33 U.S.C. § 1341, RCW 90.48.120, RCW 90.48.260 Chapter 173-200 WAC and Chapter 173-201A WAC, water quality certification is granted to the Applicant subject to the conditions within this Order.

Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (Chapter 173-201A WAC), ground water standards (Chapter 173-200 WAC) or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup of surface waters, ground waters or sediments occurring as a result of project construction or operations.

A. General Conditions:

- A1. For purposes of this Order, the term "Applicant" shall mean Bluefield Holdings, Inc. and its agents, assignees and contractors.
- A2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Northwest Regional Office, Attn: 401/CZM Federal Project Manager, 3190 160th Avenue SE, Bellevue, WA 98008-5452. Any submittals shall reference Order #8941 and Corps Reference #NWS-2011-612.
- A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on October 11, 2012. The Applicant will be out of compliance with this Order and must reapply with an updated application if the information contained in the JARPA is voided by subsequent changes to the project not authorized by this Order.

- A4. Within 30 days of receipt of an updated JARPA, Ecology will determine if the revised project requires a new water quality certification and public notice or if a modification to this Order is required.
- A5. This Order shall be rescinded if the U.S. Army Corps of Engineers does not issue an individual Section 404 permit.
- A6. Copies of this Order shall be kept on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and lead workers, and state and local government inspectors.
- A7. The Applicant shall provide access to the project site and all mitigation sites upon request by Ecology personnel for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.
- A8. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines that further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified (e.g., violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect water quality.
- A9. The Applicant shall ensure that all appropriate project engineers and contractors at the project site have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order. The Applicant shall provide Ecology a signed statement (see Attachment A for an example) from each project engineer and contractor that they have read and understand the conditions of this Order and the above-referenced permits, plans, documents and approvals. These statements shall be provided to Ecology before construction begins at the project or mitigation sites.
- A10. This project has not gone through the state and federal certification process to sell wetland credit for compensatory mitigation. The Applicant shall not sell wetland credits for compensatory wetland mitigation for federal Section 404 and Section 10 permits and Washington State Section 401 Water Quality Certifications without the project being certified through the process spelled out in federal rule 33CFR sections 325 and 332 and Washington State Wetland Mitigation Banking Act (90.84 RCW) and WAC 173-700.
- A11. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state or related aquatic resources, except as specifically provided for in conditions of this Order.

- A12. Failure of any person or entity to comply with this Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce its terms.

B. Native Planting Conditions:

- B1. Except as modified by this Order, the native planting area shall be installed and monitored consistent with the *Bluefield Holdings, Inc. Duwamish River Habitat Restoration Program: Site 1 Planting Plan* prepared by Grette Associates, Inc., dated June 2011, and the *Bluefield Holdings, Inc. Duwamish River Habitat Restoration Program: Site 1 Monitoring Plan* prepared by Grette Associates, Inc., dated February 2012, and as revised.
- B2. In addition to conditions in the above-referenced documents, the following requirements shall be conditions of this Order:
- a. As-Built Report (Year 0): A report documenting the topographic contours and plants installed in the mitigation areas must be prepared when site construction and planting are completed. The as-built report needs to accurately reflect any changes made subsequent to the reports referenced in B1 above, and shall include the following:
 - i. Vicinity map showing site access.
 - ii. Drawings that clearly identify in plan view the location and square footage of the planted area.
 - iii. The installed planting scheme showing approximate locations of plants and the time of planting.
 - iv. Photographs of planting areas taken from permanent reference points.
 - v. Locations of photopoints, and sampling sites.
 - vi. A description of any changes to the mitigation plan that occurred during construction.
 - vii. Provisions for maintenance and monitoring of plants.
 - viii. Contingencies if performance standards are not being met.

A copy of the as-built report shall be sent to Ecology's Northwest Regional Office, per Condition A2, within 60 days of completing installation of the mitigation measures.

- b. Monitoring: The condition of riparian plantings shall be recorded in years 1, 3, 5, 7 and 10 after the Year 0 report. Monitoring reports should document plant survival and vigor and include representative photos from permanent locations. Copies of all monitoring reports shall be submitted to Ecology per Condition A2 above by December 31 of each year that they are due.

c. Performance Standards: The project shall meet the following performance standards:

- Survival of plantings and percent areal coverage consistent with Table 3—Biological Success Criteria of the Monitoring Plan, pages 9-12 (Grette Associates, February 2012).

d. Maintenance: The Applicant is responsible for maintenance and protection of the native vegetation planting area both throughout and after the 10-year monitoring period for riparian plantings. All woody plants that fail to survive after Year 1 shall be replaced before or at the beginning of the next growing season. Subsequent years shall follow the Contingency Measures as outlined in Table 3—Biological Success Criteria of the Monitoring Plan, page 12 (Grette Associates, February 2012).

C. Water Quality Condition:

- C1. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-210(1)(e)(i).
- C2. The Applicant shall implement in-water construction water quality sampling and monitoring per the *Bluefield Holdings, Inc. Duwamish River Habitat Restoration Program: Site 1 Water Quality Monitoring Plan* (hereafter called the "Water Quality Monitoring Plan") prepared by Bluefield Holdings, Inc. in association with Grette Associates, dated October 8, 2012, or as modified by this Order or revised and approved by Ecology.
- C4. Sampling for turbidity shall occur a minimum of one time per day during all in-water construction activity and during tidal inundation of areas where activities have taken place. Sampling shall increase if turbidity exceedances occur.
- C5. Visual monitoring of both the in-water work area and the areas up-current and down-current of the work area shall be completed during and between sampling efforts for turbidity. Inspections of these areas shall occur during work activity and throughout all in-water construction activity, as well as during tidal inundation of areas where activities have taken place. Visual monitoring shall increase if turbidity exceedances occur.
- C6. Reporting: If no exceedances are detected, results of water quality sampling shall be forwarded to Ecology on a monthly basis in accordance to Condition A2.
- C7. Notification of exceedances: Notification of exceedances that are detected through water quality sampling shall be made to Ecology within 24 hours of occurrence. Notification shall be made with reference to Order #8941, Attn: 401/CZM Federal Project Manager,

by telephone at (425) 649-7129 or (425) 649-7000, or by fax to (425) 649-7098. The Applicant shall, at a minimum, provide Ecology with the following information:

- a. A description of the nature and cause of exceedance.
- b. The period of non-compliance, including exact dates, duration, and times and/or the anticipated time when the Applicant will return to compliance.
- c. The steps taken, or to be taken, to reduce, eliminate, and prevent recurrence of the non-compliance.
- d. In addition, within five (5) days after notification of an exceedance, the Applicant shall submit a written report to Ecology that describes the nature of the exceedance, turbidity results and location, photographs, and any other pertinent information.

D. Conditions for Construction Activities:

General Conditions:

- D1. Applicant shall obtain and comply with a Construction Stormwater General Permit for this project.
- D2. Construction stormwater, sediment, and erosion control best management practices (BMPs; e.g., filter fences, etc.) suitable to prevent exceedances of state water quality standards shall be in place before starting construction at the site.
- D3. Sediment and erosion control measures shall be inspected and maintained prior to and during project implementation.
- D4. All construction debris shall be properly disposed of on land so that it cannot enter a waterway or cause water quality degradation to state waters.
- D5. Machinery and equipment used during construction shall be serviced, fueled, and maintained upland, unless otherwise approved by Ecology, in order to prevent contamination to any surface water.
- D6. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall be contained for proper disposal, and shall not be discharged into state waters or storm drains.

- D7. Work in or near the water that may affect fish migration, spawning, or rearing shall cease immediately upon a determination by Ecology that fisheries resources may be adversely affected.
- D8. To the maximum extent practicable, site work shall be completed behind a berm of existing undisturbed earth prior to breaching of the berm in order to minimize turbidity in waters of the state.
- D9. The Applicant shall not conduct vehicle operation below the ordinary high water line when inundated with tidal waters.
- D10. Any in-water work shall be completed in a controlled manner during the lowest practicable tide.
- D11. All disturbed soil surfaces shall be back-bladed and stabilized prior to tidal inundation in order to prevent suspension of fine sediment.
- D12. A containment boom or turbidity curtain shall be installed in the water adjacent to the intertidal shoreline excavation work prior to commencement of any excavation activities.
- D13. Excavated material shall not be stockpiled on a temporary or permanent basis below the OHWL.
- D14. Native riparian vegetation shall be left in place along the shoreline to the extent practicable.
- D15. If cast in place, wet concrete/grout shall be prevented from entering waters of the state. Forms for any concrete/grout structure shall be constructed to prevent leaching of wet concrete/grout. Impervious materials shall be placed over any exposed concrete/grout not lined with the forms that will come in contact with state waters. Forms and impervious materials shall remain in place until the concrete/grout is cured.
- D16. Clean Fill Criteria: Applicant shall ensure that fill (sand and soil) placed for the proposed project does not contain toxic materials in toxic amounts.

E. Emergency/Contingency Measures:

- E1. The Applicant shall develop and implement a Spill Prevention and Containment Plan for all aspects of this project.

- E2. The Applicant shall have adequate and appropriate spill response materials on hand to respond to emergency release of petroleum products or any other material into waters of the state.
- E3. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored properly to prevent spills into state waters.
- E4. Any work that is out of compliance with the provisions of this Order, or conditions causing distressed or dying fish, or any discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, is prohibited. If these occur, the Applicant shall immediately take the following actions:
 - a. Cease operations at the location of the violation or spill.
 - b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.
 - c. Notify Ecology of the failure to comply. All oil spills shall be reported immediately to Ecology's 24-Hour Spill Response Team at 1-800-258-5990, **and** within 24 hours of spills or other events to Ecology's 401/CZM Federal Project Manager at (425) 649-7129 or (425) 649-7000.
 - d. Submit a detailed written report to Ecology within five (5) days that describes the nature of the event, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.

Compliance with this condition does not relieve the Applicant from responsibility to maintain continuous compliance with the terms and conditions of this Order or the resulting liability from failure to comply.

F. Timing Requirements

- F1. All in-water work shall be completed by the work window identified in the most current Hydraulic Project Approval (HPA) issued for this project. Any project change that requires a new or revised HPA should also be sent to Ecology for review.
- F2. This Order is valid until all compliance requirements in this document have been met.

G. Reporting and Notification Requirement Conditions

- G1. The Applicant shall provide to Ecology's 401/CZM Federal Permit Manager a copy of the final Corps permit within 2 weeks of receipt of the permit. A copy shall be submitted per condition A2 above.
- G2. Applicant shall provide notice to Ecology's 401/CZM Federal Project Manager at least three (3) days prior to the start of construction and within 14 days after completion of construction at the project site. Notification, referencing Corps Reference #NWS-2011-612, Order #8941 can take place by telephone to (425) 649-7129 or (425) 649-7000, fax to (425) 649-7098, or in writing.
- G3. If the project construction is not completed within 13 months of issuance of this Order, the Applicant shall submit per Condition A2 a written construction status report and submit status reports every 12 months until construction and planting is complete.

YOUR RIGHT TO APPEAL

You have a right to appeal this Order to the Pollution Control Hearing Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do both of the following within 30 days of the date of receipt of this Order:

File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.

Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.

You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

ADDRESS AND LOCATION INFORMATION

Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
Pollution Control Hearings Board 1111 Israel Road SW STE 301 Tumwater, WA 98501	Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903

CONTACT INFORMATION

Please direct all questions about this Order to:

Rebekah Padgett
Department of Ecology
Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008
(425) 649-7129
rebekah.padgett@ecy.wa.gov

MORE INFORMATION

Pollution Control Hearings Board Website

www.eho.wa.gov/Boards_PCHB.aspx

Chapter 43.21B RCW - Environmental and Land Use Hearings Office – Pollution Control Hearings Board

<http://apps.leg.wa.gov/RCW/default.aspx?cite=43.21B>

Chapter 371-08 WAC – Practice And Procedure

<http://apps.leg.wa.gov/WAC/default.aspx?cite=371-08>

Chapter 90.48 RCW – Water Pollution Control

<http://apps.leg.wa.gov/RCW/default.aspx?cite=90.48>

Chapter 173-204 WAC – Sediment Management Standards

www.ecy.wa.gov/biblio/wac173204.html

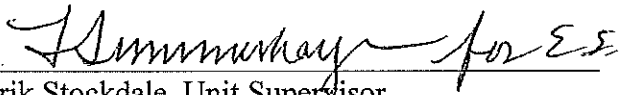
Chapter 173-200 WAC – Water Quality Standards for Ground Waters of the State of Washington

www.ecy.wa.gov/biblio/wac173200.html

Chapter 173-201A WAC – Water Quality Standards for Surface Waters of the State of Washington

www.ecy.wa.gov/biblio/wac173201A.html

SIGNATURE



Erik Stockdale, Unit Supervisor

Wetlands/401 Unit

Shorelands and Environmental Assistance Program

Northwest Regional Office

12/24/12

December 24, 2012

ATTACHMENT A

**BLUEFIELD HOLDINGS, INC.
DUWAMISH RIVER HABITAT RESTORATION PROGRAM, SITE 1 PROJECT
Water Quality Certification Order #8941**

**Statement of Understanding of
Water Quality Certification Conditions**

I have read and understand the conditions of Order #8941 Section 401 Water Quality Certification for the Bluefield Holdings, Inc. Duwamish River Habitat Restoration Program, Site 1 Project. I have also read and understand all permits, plans, documents, and approvals associated with the project referenced in this Order.

Signature

Date

Title

Company